



राजपत्र, हिमाचल प्रदेश (असाधारण)

हिमाचल प्रदेश राज्यशासन द्वारा प्रकाशित
शिमला, बोरवार, ३० जून, १९९४/९ अगष्ट, १९१६

हिमाचल प्रदेश सरकार

निर्वाचन विभाग

अधिसूचना

शिमला-१७१००२, ३० जून, १९९४

संख्या ३-१४/९४-ई० एन० एन०.—समस्त निर्वाचन आयोग की अधिसूचना संख्या ४२/हि० प्र० वि० स०/३/९४, दिनांक १४ जून, १९९४ तदनुसार/२४ अक्टूबर, १९१६ (अनू), अंग्रेजी, स्वतंत्रता सहित, जिसमें हिमाचल प्रदेश उच्च न्यायालय, शिमला का निर्वाचन अर्जी संख्या ३ वर्ष १९९४ का निर्णय निहित है, को जन-साधारण की सूचना हेतु प्रकाशित किया जाता है।

आदेश से,

राजेंद्र भट्टाचार्य,

विस्तारपूर्वक एवं सचिव (निर्वाचन)

तथा मुख्य निर्वाचन अधिकारी, हिमाचल प्रदेश।

भारत निर्वाचन आयोग

नई दिल्ली,

14 जून, 1994

दिनांक

24 ज्येष्ठ, 1916 (शक)।

अधिसूचना

संख्या 82/हि० प्र०-वि० स०/3/94.—लोक प्रतिनिधित्व अधिनियम, 1951 (1951 का 43) की धारा 106 के अनुसरण में, निर्वाचन आयोग 1994 की अर्जी संख्या 3 में शिमला स्थित हिमाचल प्रदेश उच्च न्यायालय के तारीख 19 मई, 1994 के निर्णय को एतद्वारा प्रकाशित करता है।

आदेश से,

धनश्याम खोहर,

सचिव,

भारत निर्वाचन आयोग।

ELECTION COMMISSION OF INDIA

NEW DELHI,

the 14th June, 1994

Dated -

24th Jyaishta, 1916 (SAKA)

NOTIFICATION

No. 82/HP-LA/3/94.—In pursuance of Section 106 of the Representation of the People Act, 1951 (43 of 1951) the Election Commission hereby publishes Judgement, dated 19th May, 1994 of the High Court of Himachal Pradesh at Shimla in Election Petition No. 3 of 1994.

Ram Partap Chandel son of Shri Hari Ram, resident of Village & Post Office Khara Chak, Tehsil Nalagarh, District Solan, (H.P.), now resident of Ward No. 4, Nalagarh Town, District Solan (H.P.)

.. Petitioner.

Versus

Chaudhary Lajja Ram son of Shri Kali Ram, resident of village Haripur Sandoli, P. O. Baddi, Tehsil Nalagarh, District Solan ;

2. Shri Inder Pal Singh resident of Beli Khol, Beli Bangla, Post Office Murara, District Solan;

3. Shri Gian Chand Panwar, resident of Badehari, Post Office Patta Mehlog, Sub-Tehsil Krishnagarh, District Solan ;

4. Miss. Majidan Sahota, resident of village Dhunhar, P.O. Ram Shahar, Tehsil Nalagarh, District Solan ;
5. Shri Bishashvar Parshad, resident of village & Post Office Ramshahar, District Solan ;
6. Shri Yadvinder Singh Rana, resident of village and P. O. Khera, Tehsil Nalagarh, District Solan ;
7. Shri Shiam Dhiman, resident of village Kulhariwala, P. O. Mandhala, Tehsil Kasuali, District Solan ;
8. Shri Het Ram, resident of village Katlu, P.O. Baila, Sub Tehsil Ram Shahar, District Solan .. Respondents.

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

ELECTION PETITION NO. 3 OF 1994

Miss. Petition No.

Appeal No.

Write Petition No.

Revision Petition No.

Civil Suit No.

Date of decision 19-5-1994.

Mr. Ram Partap Chandel

..Petitioner.

Versus

Chaudhary Lajja Ram & others

.. Respondents.

Coram

The Hon'ble Mr. Justice
The Hon'ble Mr. Justice
The Hon'ble Mr. Justice

D.P. SOOD, J.

Whether approved for reporting ? Yes
For the Appellant(s)/Petitioner(s)
For the Respondent(s) No. 1.

Mr. H. S. Matewal Sr. Advocate with M/s
Ravi Bakshi, Ramakant Sharma and Ms.
P. P. Grewal Advocates, Mr. Chhabil Dass
Advocate.

D.P. SOOD, J.

A Notification relating to 68 assembly seats in Himachal Pradesh Vidhan Sabha for holding the general elections to the Himachal Pradesh Legislative Assembly Constituencies, was issued. The instant list pertains to the dispute relating to 11, Doon Assembly Constituency.

The material facts for the purpose of deciding the preliminary issues may now be stated. Election programme with respect to this constituency was as under :

1. Last date of acceptance of nomination papers

16-10-1993.

2. Last date of withdrawal of nomination papers	20-10-1993.
3. Date of polling	9-11-1993.
4. Counting of votes	27-11-1993.
5. Declaration of results	28-11-1993.

As per list Ex. PW-1/J there were 24 validly nominated candidates for this constituency, out of which the parties to the instant election petition contested the election. Remaining candidates including S/Sh. Bhajan Singh, Amar Nath Kaushal and Ram Asra gave notice of withdrawal to the Returning Officer on October 20, 1993 which were accepted and, thus, they withdrew from the election. The total number of votes polled in the said constituency were 38,494. Out of these votes, 285 votes were declared as invalid votes. Chaudhary Lajja Ram respondent No. 1, was declared elected having secured 14,662 votes against his nearest rival Ram Partap Chandel, the petitioner, who secured 14,059 votes. The petitioner has assailed the election to this constituency by filing the instant election petition, registered as E. P. No. 3 of 1994, praying that :

- ballot papers be re-counted;
- that the election of Chaudhary Lajja Ram (respondent No. 1) be declared as void and the petitioner be declared to have been duly elected from this constituency ;
- that Chaudhary Lajja Ram be held guilty of committing corrupt practices and resultantly, he be declared disqualified for a period of six years.

A challenge to the validity of the election of respondent No. 1 has been made by the petitioner on the ground that the petitioner had committed corrupt practices, by capturing Booth No. 49, situated at Village Billanwali Labana, under sub-section (4) of Section 123 of the Representation of Peoples Act, 1951, as amended up-to-date (shortly hereinafter referred to as 'the Act'). This ground was based on the allegations :

- That polling in Polling Booth No. 49, situate at Government Primary School Billanwali Labana was initially peaceful. However, at about 2 P. M., Shri Bhajan Singh son of respondent No. 1 as also his election agent came alongwith 70 other un-known persons (some of them) being Sikhs and others clean shaven) in two trucks bearing No. HIA-6775 and HIA 6552 owned and possessed with route permit in the individual names of Chaudhary Lajja Ram, respondent No. 1 and Harbhajan Singh, his son, respectively having flags of Congress Party and banners of Chaudhary Lajja Ram, respondent No. 1, as also his posters pasted on said trucks; that said Harbhajan Singh after getting down from the truck went inside the Polling Booth and took Subhash Chander Agnihotri the Presiding Officer out of the Polling Booth on one side and apprised him (within the hearing of Mohinder Singh, one of the polling agent of the petitioner) that respondent No. 1, had sent those persons to cast vote in place of such persons who do not turn up for the polling;

that said Harbhajan Singh told him (Presiding Officer) that the Congress Party would come in power and he would be benefitted, to which the later agreed; that after about 10 minutes, these persons alongwith Harbhajan Singh aforesaid came in and captured the Polling Booth, threatened the polling agent of the petitioner to keep quite and sit in calm and in these circumstances the Presiding Officer allowed those un-known persons to cast their votes;

that S/Sh. Chanan Singh and Mohinder Singh, polling agents of the petitioners raised an objection to the identity of these voters and to the polling of these bogus votes by depositing the requisite fee qua each one of these electors with the Presiding Officer but he neither heard the objection nor allowed the money to be deposited ;

that various persons whose particulars have been detailed in para 6(a) to 6(e), did not turn up for voting but their votes were got cast by booth capturing by said Harbhajan Singh, son as also election agent of Chaudhary Lajja Ram, in connivance with the Presiding Officer ;

(ii) That on 1-11-1993 at about 6 P.M., the petitioner, his son as also his election agent Harbhajan Singh (who handed over the material) alongwith Sh. Amar Nath Kaushal later on appointed as counting agent, went to M/s. Sehgal Printers and Packers, Rajgarh Road, Solan, owned by Sh. Rajnish Sehgal in Maruti Car bearing No. HP-120015 and got 6000 pamphlets published under the heading "MAMA BHANJA CHHAL SE DOON KSHETRA KO BACHAO" (save Doon area from plans of *Mama and Bhanja*) and distributed the said pamphlets; containing false and defamatory statements with respect to the honesty, integrity and veracity i.e. personal character and conduct of the petitioner a copy of which is Ex. P-1, with a view to damage his prospects in the election, in a subsequent public meeting of the Congress Party, just before its closure held on 4-11-1993 in village Baddi in an open space near the Bus Stand on the back of the Excise Barrier, which was earlier addressed by Sardar Beant Singh, the Chief, Minister of Punjab, Chaudhary Lajja Ram (respondent No. 1), Ram Asra, President of Doon Constituency Congress (I) Unit and other congress leaders.

(iii) That aforesaid persons headed by Chaudhary Harbhajan Singh, the election agent of the petitioner alongwith Amar Nath Kaushal and HemShankar came in a gypsy bearing registration No. HIA-6372 went to the shop of Asha Ram, Dentist which was also being used as the Office of the Congress by respondent No. 1 and Amar Nath, aforesaid, pasted the pamphlet on the shop of Asha Ram and handed over some of them for distribution as also Asha Ram distributed the said pamphlets to various shopkeepers. Shri Mohinder Singh, President, Gram Panchayat, Matooli, a supporter of the petitioner did raise an objection to such distribution but of no avail. The above said pamphlets were also allegedly pasted and distributed on 5-11-1993 by these persons in villages Diggel, Barotiwala and subsequently they repeated the same work of pasting and distribution of pamphlets on 7-11-1993 in Village Bhatauli Kalan and Goela.

Notice of election petition was issued to the respondents. Respondent No. 7 refused to accept service whereas, respondents 2 to 6 and 8 remained absent despite service. Respondent No. 3 put in appearance on 8-3-1994 but absented on the adjourned date. Thus respondents 2 to 8 have been proceeded *ex-parte*. Only respondent No. 1, the returned candidate, has resisted and contested the election petition by raising two preliminary objections on the grounds;

(i) that the averments with respect to the alleged irregularities committed in relation to counting of votes detailed in para 8, are vague and are lacking in material; and

(ii) that the election petition deserves to be dismissed for want of necessary parties in as much as the allegations of corrupt practices have been made against S/Sh. Harbhajan Singh, Ram Asra and Amar Nath Kushal in the petition, who are validly nominated candidates though later withdrew from the election, have not been made parties in the election petition. As such, the petition being not in conformity with Section 82 of the Act, is liable to be dismissed under sub-section (1) of Section 86 thereof.

On merits, the detailed facts pertaining to the commission of corrupt practices by respondent No. 1, muchless by other persons, have categorically been denied. Respondent No. 1 has denied the fact that any attempt was made for booth capturing or booth was captured or any bogus voters were brought by Harbhajan Singh aforesaid or any other person on his behalf. Similarly, the

publication and printing of aforesaid pamphlets by respondent No. 1 or his election agent or any other person, is denied. The factum of getting the receipt in the name of Amar Nath Kaushal and handing over or getting the pamphlets published in the manner alleged by the petitioner or visits to various villages by election agents or workers of respondent No. 1, has also been controverted. In crux, according to him, he neither consented to nor participated nor asked any person for the capturing of booth nor to the publication or distribution of the above said pamphlets in the manner alleged by the petitioner. In short, all allegations in this respect have been categorically denied.

In his replication, the petitioner reiterated the allegations made in the petition with respect to the corrupt practices. According to him, he did not allege any corrupt practice against S/Sh. Bhajan Singh, Amar Nath Kaushal and Ram Ashra in the election petition. The petitioner has shown his ignorance with respect to the above said persons to be validly nominated candidates. According to him, the said persons acted as election agents, workers and counting agents of respondent respectively and they are not liable to be made party in the election and as such, the petition does not entail dismissal under Section 86(1) of the Act.

At this stage, it is pertinent to detail that the petitioner has also filed an application under order 1 rule 10 CPC as well as other enabling provisions of the Act (registered as EMP 4 of 1994) for impleading S/Sh. Harbahajan Singh, Amar Nath Kaushal and Ram Ashra as respondents in the main election petition as an abundant caution on the ground that though the petitioner—applicant has not made any allegation of corrupt practice against the above said persons, the allegations being solely against respondent No. 1 and as such being not necessary party, yet to obviate the objection so raised, the petitioner has prayed that they be directed to be impleaded in the array of respondents in the main petition as respondents 9 to 11.

This application has also been vehemently resisted by respondent No. 1, the returned candidate, on the same grounds as detailed in his written statement. According to him, firstly, the said persons were validly nominated candidates to the knowledge of the petitioner and secondly, the petitioner—applicant has not only alleged corrupt practices against him, but also against the aforesaid three candidates within the meaning of the Act who are necessary parties and the election petition being not a valid one in terms of Section 82, is liable to be dismissed under sub-section (1) of Section 86 of the Act.

In rejoinder to this reply filed by respondent the petitioner has against reiterated the same grounds as detailed in the application and stated that petitioner never knew that the aforesaid persons were validly nominated persons. He again controverted the contentions raised by the contesting respondent that overments of corrupt practices have been made against the aforesaid three persons, namely, Harbahajan Singh, Amar Nath Kaushal and Ram Asra. According to him, the alleged averments are solely against respondent No. 1 and none else.

Another application under Section 151 CPC, registered as EMP 6 of 1994, praying for the immediate disposal of EMP 4 of 1994, an application under Order 1 rule 10 CPC, has been made by respondent No. 1 which, infact, has not been opposed by the petitioner except for fixation of some actual date for hearing. This prayer has been acceded to by this Court.

In view of the pleadings of the parties in the main petition and also considering that the alleged factum of non-joinder of necessary parties goes to the root of the case, this Court framed the following issues *vide* its order dated 21-3-1994 :

1. Whether S/Sh. Bhajan Singh, Ram Asra and Amar Nath Kaushal were candidates in relation to 11-Doon Constituency in the election on 9th November, 1993, as alleged ? OPR=1.
2. Whether the aforesaid persons are necessary parties as alleged ? OPR-1.

3. In case issue No. 2 is decided in the affirmative, whether the election petition is not liable to be dismissed ? OPP

4. Relief.

Both parties have led evidence in support of their respective claims. In order to show that S/Sh. Harbhajan Singh, Amar Nath Kaushal and Ram Asra were necessary parties, respondent No. 1 has produced 5 witnesses on his behalf whereas petitioner himself is the lone witness on his behalf.

I have heard the learned counsel for the parties at length and also carefully gone through the entire record and statements of the witnesses. As such, I now proceed to decide the preliminary objections issue-wise.

Issue No. 1.

This issue pertains to the fact as to whether S/Sh. Bhajan Singh, Ram Asra and Amar Nath Kaushal were validly nominated candidates ? In this regard the testimony of Rajender Kumar (RW-1), the then Election Kanungo at Solan and that of Sh. Sirikant Baldi, Deputy Commissioner, Solan district, are material. The above said constituency falls in District Solan. RW-2 was the Returning Officer of the constituency in question at the material time. He has proved the nomination papers Ex. RW-1/A to RW-1/H as also the withdrawal forms Ex. RW-1/K to RW-1/M of S/Sh. Bhajan Singh, Amar Nath Kaushal and Ram Asra respectively. He has also stated that the list of validly nominated candidates as envisaged under rule 8 of the Conduct of Election Rules was prepared by him under his signatures and that this list was published by notifying the same on the Notice Board of the Mini Secretariat of Deputy Commissioner's Office at Solan. In cross-examination he has stated that Harbhajan Singh had submitted two forms and one nomination paper he signed and the other as Bhajan Singh and that he being a new person to the place, he satisfied himself regarding the identity of the said person from the patwari, kanungo and other reputed persons, like MLA etc. alongwith the candidate as to his name and parentage and also the where abouts and then after satisfying himself in that manner, the candidate intending to contest the election was allowed to fill up the nomination paper in his presence. He further stated that at the time of filing of nomination paper or at the time of withdrawal thereof pertaining to the above said three persons, no complaint of any sort was received by him from any corner. To a Court question, the witness has stated that he did not receive any complaint from any corner or any candidate that out of the persons who had filled up the nomination papers or withdrawn their candidature, anyone was an impersonated person.

RW-1. was ported as Election Kanungo at Solan at the material time. He had brought the original file containing the nomination papers of the above said three persons. In his cross-examination, he has stated that he was by the side of the Returning Officer at the time when these nomination papers were filed and accepted and also at the time when these were withdrawn. According to him, S/Sh. Bhajan Singh, Amar Nath Kaushal and Ram Asra signed the nomination as also withdrawal papers in his presence as also that of the Returning Officer. He states that there were 24 persons in fact who had filed the nomination papers and out of them only nine persons contested the election. EXRW-1/J is the list of the validly nominated candidates.

No evidence in rebuttal has been adduced by the petitioner on this issue.

In view of the above-said un-rebutted, cogent and convincing evidence, the factum of S/Sh. Bhajan Singh, Amar Nath Kaushal and Ram Asra having validly filed their nomination papers and thereafter having withdrawn their candidature and consequently falling within the definition of the term "candidate", in terms of Section 79(5) of the Act, is proved beyond doubt. Issue No. 1 is decided in favour of respondent No 1 and against the petitioner

Issue No. 2 :

This issue is of crucial nature. Shri Chhabil Dass, learned counsel for respondent No. 1, has vehemently urged that the scheme of the Act is that no election can be called in question except by an election petition presented in accordance with the provisions of Part VI of the Act. It is pointed out that unless all the requirements of Sections 81, 82 or 117 are complied with, an election cannot be questioned. The compliance of the aforesaid provisions, according to him, is of mandatory nature and if it is not so done, Section 86(1) enjoins a statutory duty upon the Court to dismiss the election petition. It is pointed out that sub-section (3) of Section 83 (as it stood before amendment in 1956) empowered the Tribunal to permit amendment of particulars of parties alleged to be guilty of corrupt practices; that now this sub-section has been deleted. It is urged that even when this sub-section was in force, it was held by the Supreme Court that even the power to permit amendment under Order 6 rule 17 CPC do not allow the petitioner to remove a defect pertaining to the presentation of a petition or joinder of parties. My attention has been drawn to the statement of the petitioner as PW-1 on this issue. It is pointed out that as per the petitioner, the petition has been drafted at his instance and under his instructions and he on oath, claims the averments made in the petition to be correct. Now, as per him the contents of alleged corrupt practices as contained in paras 6 and 7, though attributed allegedly to respondent No. 1 only, yet reading thereof on the face of it, *prima-facie* amounts to averments of corrupt practices against each one of the three persons namely, Harbhajan Singh Amar Nath Kaushal and Ram Asra, respectively, and even if none of these persons fell within the category of contesting candidates or returned candidates, as envisaged under Section 82(a), they fell within the category of any other candidate against whom allegation of corrupt practices have been made as per Section 82(b) and thus, they are necessary parties. They having not been joined now cannot be allowed to be impleaded as such in the garb of powers exercised by this Court under order 1 rule 10 CPC. Relying upon the observations made in the case of *Mohan Raj vs. Surinder Kumar Taparia & others*(¹), it is urged that no doubt, the power of amendment is preserved to the court and order 1, rule 10 enables the Court to strike out parties but the Court cannot use order 6, rule 17 or Order 1, rule 10 CPC to avoid the consequences of non-joinder. According to him, the CPC applies subject to the provision of the Act and any rules made thereunder as envisaged under section 87 thereof. When the Act enjoins the penalty of dismissal of the petitioner by non-joinder of the party, the provisions of the CPC cannot be used as a curative means to save the election petition.

On the contrary, Sh. H. S. Matewal, Sr. Advocate, appearing on behalf of the petitioner, has vehemently contended that the powers to try an election petition upon the High Court has been given by Section 80(A) of the Act. The scheme under the Act envisages the purity of election for which the constituency is vitally concerned with the investigation into proof or disproof of corrupt practices of candidate at election. Thus, the public policy behind Section 82(b) is the compulsive presence of the candidate against whom corrupt practice has been imputed. As per him, it is of no consequence whether he has been joined at his own instance or by the election petitioner. Even otherwise, according to him, Section 82 envisages that a petitioner shall join as respondents to his petition, firstly where petitioner claims relief of declaration that election of all or any of the returned candidates is void, he is required to join all the returned candidates and secondly where in addition to claiming the above said declaration, claims a further declaration that he himself, or any other candidate has been duly elected, all the contesting candidates other than the petitioner and any other candidate, against whom allegation of corrupt practice is made in the petition. As per him, nominated candidates who withdrew from the contest and did not contest the election at all, are not required to be joined as respondents. It is submitted that no such allegation of corrupt practice has been made against either of the three persons, namely, Bhajan Singh, Amar Nath Kaushal and Ram Asra and, therefore, they are not liable to be joined as such. Relying upon the observations made in the case of *Shiv Chand v. Ujagar Singh & another*, (²), it is submitted that keeping in view the public policy behind section 82(b) of the Act as also the fact that the constituency is vitally concerned with the purity of elections, this Court should direct the impleadment of the above said persons as respondents 9 to 11,

(1) AIR 1969, SC, 677.

(2) AIR 1978, SC, 1583.

in case it is held that they are necessary parties. It is urged that what is imperative is the presence as a respondent of such a candidate, not how or at whose instance he has been joined as a respondent for achieving the two fold purpose; the first one being that when injurious averments are made against a candidate, natural justice necessitates his being given an opportunity to meet those charges, because the consequences of such averments being upheld, may be disastrous for such candidate and the second being that in the absence of the party against whom charges have been levelled, the reality of the adversary system will be imposed. In order to augment this submission learned counsel has also drawn my attention to Section 99 of the Act whereunder at the time of making an order under Section 98, this Court is required to record (i) finding whether any corrupt practice has or has not been proved to have been committed at the election and the nature of that corrupt practice and (ii) the names of all persons, if any, who have been proved at the trial to have been guilty of any corrupt practice and the nature of that practice. In order to do so in case a person is not a party to the petition, he shall not be named in the order under sub-clause (ii) of clause (a) unless he has been given a notice to appear before the High Court and to show cause why he should not be so named. It is urged that this Court if finds the corrupt practices against any one of the above said three persons, it can direct notice of the election petition to the said person or all of them at this stage too.

The nature of the right to elect, the right to be elected and the right to dispute an election and the scheme of the constitutional and statutory provisions in relation to these rights, stand already explained by the Apex Court in *N. P. Ponnuswami vs. Returning Officer, Namakkal Constituency*⁽³⁾, and *Jagan Nath vs. Jaswant Singh*⁽⁴⁾, and reiterated in the case of *Jyoti Pasu vs. Devi Ghosal*⁽⁵⁾, as under:—

"8. A right to elect, fundamental though it is to democracy, is, anomalously enough, neither a fundamental right nor a Common Law Right. It is pure and simple a statutory right. So is the right to be elected. So is the right to dispute an election. Outside of statute, there is no right to elect, no right to be elected, and no right to dispute an election. Statutory creations they are, and therefore, subject to statutory limitation. An election petition is not an action at Common Law nor in equity. It is a statutory proceeding to which neither the common law nor the principles of equity apply but only those rules which the statute makes and applies. It is a special jurisdiction, and a special jurisdiction has always to be exercised in accordance with the statute creating it. Concepts familiar to Common Law and Equity must remain strangers to Election Law unless statutorily embodied. A Court has no right to resort to them on considerations of alleged policy because policy in such matters, as those relating to the trial of election disputes, is what the statute lays down. In the trial of election disputes, Court is put in a 'straight jacket'. Thus, the entire election process commencing from the issuance of the notification calling upon a constituency to elect a member, or members right up to the final resolution of the dispute, if any, concerning the election is regulated by the Representation of the People Act, 1951, different stages of the process being dealt with different provisions of the Act. There can be no election to Parliament or the State Legislature except as provided by the Representation of the People Act, 1951 and again, no such election may be questioned except in the manner provided by the Representation of the People Act. So the Representation of the People Act has been held to be a complete, and self-contained code within which must be found any right claimed in relation to an election or an election dispute. We are concerned with an election dispute. The question is who are parties to an election dispute and who may be impleaded as parties to an election petition. We have already referred to the Scheme of the Act. We have noticed the necessity to rid ourselves of notions based on Common Law or

- (3) AIR 1952, SC 64.
- (4) AIR 1954, SC, 210.
- (5) AIR 1982, SC, 983.

Equity. We see that we must seek an answer to the question within the four corners of the statute. What does the Act say?

9. Section 81 prescribes who may present an election petition. It may be any candidate at such election; it may be any elector or the constituency; it may be none else. Section 82 is headed "Parties to the petition" and clause (a) provides that the petitioner shall join as respondents to the petition the returned candidates if the relief claimed is confined to a declaration that the election of all or any of the returned candidates is void and all the contesting candidates if a further declaration is sought that he himself or any other candidate has been duly elected. Clause (b) of Section 82 requires the petitioner to join as respondent any other candidate against whom allegations of any corrupt practice are made in the petition. Section 86(4) enables any candidate not already a respondent to be joined as a respondent. There is no other provision dealing with the question as to who may be joined as respondents. It is significant that while cl. (b) of S. 82 obliges the petitioner to join as a respondent any candidate against whom allegations of any corrupt practice are made in the petition, it does not oblige the petitioner to join as a respondent any other person against whom allegations of any corrupt practice are made. It is equally significant that while any candidate not already a respondent may seek and, if he so seeks, is entitled to be joined as a respondent under S. 86(4), any other person cannot, under that provision seek to be joined as a respondent, even if allegations of any corrupt practice are made against him. It is clear that the contest of the election petition is designed to be confined to the candidates at the election. All others are excluded. The ring is close to all except the petitioner and the candidates at the election. If such is the design of the statute, how can the notion of 'proper parties' enter the picture at all? We think that the concept of 'proper parties' is and must remain alien to an election dispute under the Representation of the People Act, 1951. Only those may be joined as respondents to an election petition who are mentioned in S. 82 and S. 86(4) and no others. However, desirable and expedient it may appear to be, none else shall be joined as respondents.

Before I proceed to appreciate the contentions advanced on behalf of the parties, it would be useful to set out the relevant provisions of the Act relating to this issue, though at the cost of repetition. Section 82 of the Act reads as follows:

"Parties to the petition—A petitioner shall join as respondents to his petition—

(a) where the petitioner, in addition to claiming a declaration that the election of all or any of the returned candidates is void, claims a further declaration that he himself or any other candidate has been duly elected, all the contesting candidates other than the petitioner, and where no such further declaration is claimed, all the returned candidates, and

(b) any other candidate against whom allegations of any corrupt practice are made in the petition.

Section 86(1) of the Act provides that the High Court shall dismiss an election petition which does not comply with the provisions of Sec. 82 of the Act. It is also now well settled, in view of the decisions of the Supreme Court in *Amin Lal v. Hunna Mal*⁽⁶⁾, and *K. V. Rao v. B. N. Reddi*⁽⁷⁾, that the expression "any other candidate" in S. 82(b) of the Act includes a candidate who had withdrawn his candidature. It has further

(6) AIR 1965, SC 1243.

(7) AIR 1969, SC 872.

been held by the Supreme Court in *Uday Singh v. M. R. Scindia*⁸ that as soon as the non-compliance with Section 82(b) of the Act comes or is brought to the notice of the Court, no matter in what manner and at what stage during the pendency of the petition, it is bound to dismiss the petition in uninstincted obedience to the command of S. 86 of the Act. At this stage, it would not be out of place to decipher the general power of amendment of the pleadings which have been dealt with by the Supreme Court in *Sethi Roop Lal v. Malti Thappar (Mrs.) and others*⁹ as under :

"10. The fasciculus of sections appearing in Chapter III of Part VI of the Act lays down the procedure for trial of election petitions. Sub-section (1) of Section 87 thereof provides that subject to the provisions of this Act and of any rules made thereunder every election petition shall be tried by the High Court, as nearly as may be, in accordance with the procedure applicable under the Code of Civil Procedure ('Code' for short). That necessarily means that Order VI Rule 17 of the Code which relates to amendment of pleadings will afortiori apply to election petitions, subject, however, to the provisions of the Act and of any rules made thereunder. Under Order VI Rule 17 of the Code the Court has the power to allow parties to the proceedings to alter or amend their pleadings in such manner and on such term as may be just and it provides that all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties. But exercise of such general powers stands curtailed by Section 86(5) of the Act, when amendment is sought for in respect of any election petition based on corrupt practice. Since Section 87 of the Act and, for that matter Order VI Rule 17 of the Code—s subject to the provisions of the Act, which necessarily includes Section 86(5), the general power of amendment under the former must yield to the restrictions imposed by the latter."

At this stage, it may also be mentioned that allegations of corrupt practice are of a quasi criminal nature and the proof that would be required in support of such allegations would be as in a criminal charge and not mere preponderance of probabilities as in the civil matter. The plain meaning of Section 123(4) of the Act indicates that it is not every statement but only "a statement of fact" to which the provision applies; that the statement of fact should be false; that such statement should be made believing it to be false or at least not true; that it should relate to the personal character or conduct etc. of any candidate; and should be reasonably calculated to prejudice prospects of that candidate's election. Unless all these requirements are satisfied, the statement does not constitute the corrupt practice under this Section, however undesirable morally or ethically the making of that statement may be otherwise. The statement of proposal giving rise to apprehension which does not materialise or which does not have reasonable likelihood of any impact thereof on the mind of the voters, does not satisfy the requirements under this provision. (See *Gadakh Yashwantrao Kankarrao, Appellant versus E.V. alias Balasaheb Vikhe Patil and others, respondents*¹⁰. As already held under issue No. 1, S/Sh. Harbhajan Singh, Amar Nath Kaushal and Ram Asra were candidates in terms of Section 79(b) of the Act. The allegations with respect to the capturing of booth and publication as also distribution of the pamphlets to the general public in the manner alleged by the petitioner, are contained in paras 6 and 7 including sub-paras thereof in the petition. As the question raised in this issue for decision before me turns on the true import of the averments made in these paras is necessary to reproduce the crux thereof as under :

That respondent No. 1 captured Booth No. 49, situate at village Billan-wali Labana through the aforesaid Harbhajan Singh, his agents, supporters and workers at the said place on 9-11-1993 at about 2 P.M. and these persons managed to cast their votes in place

8. AIR 1976 SC 744.

9. (1994) 2 Supreme Court Cases 579.

10. (1994) 1 Supreme Court Cases 682.

those voters of various villages, who did not turn up at the booth; that the Presiding Officer of the concerned Booth also connived to the above said acts of Harbhajan Singh and his associates at the former's behest on the above said date, time and place. The second allegation is that respondent No. 1 got the pamphlets containing defamatory statements against the petitioner published and distributed in his presence and association in the public meeting held on 5-11-1993 through S/Sh. Harbhajan Singh and Amar Nath Kaushal, his agents, supporters and workers with his consent on that date and subsequent thereto in different villages on the same date as also on 7-11-1993, respectively.

From the aforesaid averments, what one would naturally and normally gather is that aforesaid persons while distributed the pamphlets in question from 5-11-1993 to 7-11-1993 at the places mentioned in para 7 (a) to 7 (h) of the petition, they also actively took part in such activities with the consent of respondent No. 1, who has categorically denied these facts in his reply in the counter paras. The petitioner has then mentioned the names of the persons other than aforesaid three candidates who has distributed the pamphlets. It is to be noted that Shri Ram Asra, the President of the Congress (I), Doon Constituency was also present and he had also delivered his lecture in addition to other persons including Sardar Beant Singh the Chief Minister of Punjab.

The construction of the aforesaid paras 6 (a) to (f) and 7 (a) to (h), suggested on behalf of the petitioner is that S/Sh. Harbhajan Singh Amar Nath Kaushal and Ram Asra have been named only with a view to show that they had taken part in the capturing of the booth as also the publication and distribution of the pamphlets in question. The petitioner while appearing as PW-1 has again reiterated the correctness of the allegations so made. Sh. Matewal learned counsel for the petitioner has attempted to convince this Court that aforesaid Harbhajan Singh was the son as also election agent of respondent No. 1 and in that capacity he was not required to be made as a party thereto. Similar is the submission with respect to the alleged activities of S/Sh. Nath Kaushal and Ram Asra.

As observed above the expression "any other candidate" in Section 82 (b) of the Act includes a candidate who had withdrawn his candidature as per the decisions of the Apex Court in the cases of Amin Lal as also K.V. Rao supra. Admittedly, S/Sh. Harbhajan Singh, Amar Nath Kaushal and Ram Asra were validly nominated candidates and they fall within the definition of "candidate" as envisaged under Section 79 (b) of the act. Thus in my opinion the aforesaid construction of paras 6 (a) to (f) and 7 (a) to (h) of the petition suggested on behalf of the petitioner is not possible without making of un-warranted addition and excision of words. This method of construction, as observed by the Apex Court in Udhay Singh's case (supra) runs counter to the cardinal canons of interpretation that a pleading has to be read as a whole to ascertain its true import without undue stretching and straining the language and without making un-warranted additions and excision of words. A bare reading of these paras of the petition leaves no room for doubt that it contains an allegation against the aforesaid three candidates two of them, namely S/Sh. Harbhajan Singh and Amar Nath Kaushal were later on appointed as election agent and counting agent respectively. The above said allegations cannot be deemed to be mere expression of opinion or apprehensions not likely to damage the prospects of the petitioner in the election. Rather the defamatory statement contained in the pamphlets pertaining to the personal character of the petitioner who was a contesting candidate, if perceived as prudent man, was likely to create an impact thereof on the mind of voters. In case the contents of the said pamphlets are scrutinised critically they do amount to create a blot on the personal character of the petitioner. It is in this sense that the publication and distribution of the pamphlets in question are to be construed for the purposes as to whether the validly nominated candidates, namely, S/Sh. Harbhajan Singh, Amar Nath Kaushal and Ram Asra are or are not necessary parties. The above said allegations contained in the above said two paras of the petition, do tantamount to an allegation of corrupt practices against the aforesaid, three duly nominated

candidates for the election, who had withdrawn their candidature subsequently. The petitioner should have, therefore, joined them as respondents to the petition, in compliance with the provisions of section 82 of the Act. Issue 2 is decided accordingly.

Issue No. 3.

Under this issue, the main question is that in case the above said three candidates are held to be necessary parties, whether the election petition is not liable to be dismissed? The onus of this issue is upon the petitioner. He has himself appeared as his own witness as PW-1. In his statement, he merely stated that he did not know as to whether the above said three persons S/Sh: Harbhajan Singh, Amar Nath Kaushal and Ram Asra had filed nomination papers or that they had withdrawn subsequently. In this respect, under discussion of issue 1, I have already held that these persons were duly nominated candidates who later on had withdrawn from their candidature. Sh. Matewal, learned counsel for the petitioner, has attempted to make a distinction that two out of the aforesaid persons were election agent and counting agent of respondent No. 1 and the third was a supporter, being the President of Congress Party of 11, Doon Constituency. He has also stressed that this Court under Section 99 has to give a finding as to the commission of corrupt practice and name the persons who are involved therein. He further submits that in case such persons are not parties to the petition, the Court has to issue a show cause notice to such persons to appear before the Court and explain as to why they should not be so named and thereafter they can be proceeded with in accordance with law. He has also taken support from the observations made in the case of Shiv Chand (supra) to the effect that the public policy requires the purity of election and above all, in election petitions, the constituency is vitally concerned with the investigation into the proof or dis-proof of corrupt practices of candidates at elections. According to him though Section 82(b) requires the presence of every candidate against whom a corrupt practice has been alleged and what is imperative is the presence as a respondent of such a candidate *not how or at whose instance he has been joined as a respondent*. In other words as per him, keeping in view the under-lying object under the provisions of Section 82(b), in view of the Scheme of the Act, the Court has the power to exercise its jurisdiction under Order 1, rule 10 CPC for directing the addition of parties.

As regards Shiv Chand's case (supra), it may be stated that therein one Sh. Mal Singh was a candidate, who had retired from the contest for the seat, although duly nominated as such. There was an application for impleadment not only by the election petitioner but also by said Mal Singh. It is in that context that the above said observations were made with respect to the manner in which the candidate had been added as a respondent. If further reference is made to para 8 of this case relied upon by the learned counsel for the petitioner, it would positively lead to the conclusion that the observations made in the case of Mohan Raj (supra), the question wherein raised was whether the provisions of the Code of Civil Procedure especially Order VI Rule 17 and Order 1, Rule 10 CPC, could be used in such a manner as to defeat the procedural policy and statutory imperative of Section 82 of the Act have also been approved and earlier observations relied upon by Sh. Matewal, learned Senior Counsel appearing for the petitioner, have been made in the peculiar circumstances involved in that case. Thus, the consistent view of the Apex Court is that it cannot be done because the provisions of the Act where they lay down specific provision, must prevail and cannot be frustrated by importing the procedural provisions contained in the Code of Civil Procedure. This view has also been reiterated in the case of Sethi Roop Lal (supra).

This matter can be viewed from another angle. Section 82 talks of contesting candidate, returned candidate and any other candidate but not of a person who is not a candidate as envisaged under Section 99 of the Act. In case Section 99 is interpreted in the manner as suggested by Shri Matewal, learned Senior Counsel appearing on behalf of the petitioner, it would not only create chaos but also adversely affect the purity of elections. Infact, in election petitions only the candidates as envisaged under Section 79(b) for the Act can be impleaded as parties and none

else. That is why the Parliament has expressly provided that an opportunity should be given to a person who is not a candidate to show cause against being "named" as one guilty of a corrupt practice. It has not thought fit to expressly provide for his being joined as a party to the election petition either by the election petitioner or at the behest of very person against whom the allegation of corrupt practice is made. The right given to the latter is limited to show cause against being "named" and that right opens up for exercise when, at the conclusion of the trial of the election petition, notice is given to him in terms of proviso to Section 99. In other words this right does not extend to participation at all stages and in all matters, a right which he would have if he is joined as a party at the commencement. Similarly, an election petitioner cannot by joining as a respondent, a person who is not candidate at the election, subject him to a prolonged trial of an election petition with all its intricacies and ramifications. In case it is allowed to be done, big dignitaries, like the Prime Minister of the country or the Chief Minister of the State or other political leaders of national dimension, can be harassed. That is why Public Policy and Legislative wisdom both seem to point to an interpretation of the provisions of the Act which does not permit the joining as parties of persons other than those mentioned in Section 82 and 86(4) of the Act. Admittedly, the provisions of the Act have taken care of persons, involved in the commission of corrupt practices. It is not as if such persons can get away with it. This Court is empowered to take action under Section 99 against such persons, but after issuing notices and affording an opportunity to him to show cause as to why he should not be "named" as being guilty of corrupt practices and then this Court can take action as envisaged under the law. In the instant list, the above-said three persons were not only the candidates in terms of Section 79(b) read with Section 82 of the Act but also Election Agents, Counting Agent and Polling Agent as suggested by the petitioner. As such, it becomes imperative upon him (petitioner) to have impleaded them as respondents in view of the nature of averments of corrupt practices alleged by him in his pleadings.

There is yet another view point. In case where a petitioner seeks relief of declaration that the election of the returned candidate is void and in addition thereto, he seeks further relief that he declared to be duly elected "Section 97 enables the returned candidate or any other party to the petition to re-criminate" i.e. to give evidence to prove that the election of such candidate would have been void, if he had been a returned candidate and a petition had been presented to question his election. If a person who is not a candidate but against whom allegations of any corrupt practice are made, is joined as a party to the petition, then by virtue of his Position as a party, he would be entitled to get benefit under Section 97. In other words, he would also be entitled to "re-criminate" such successful petitioner. Such a construction of the provisions of the Act, would throw the doors of an election petition open and convert the petition into a "free for all" fight. Evidently, this is not the intention under the Scheme of the Act. Infact, joinder of parties is, by statute, limited only to the candidates as defined under Section 79(b) i.e. validly nominated candidate who has withdrawn from the contest or contesting candidate or returned candidate and none else. Thus, in this view of the matter too, only those parties who are statutorily required to be joined as such, either under Section 82 or sub-section (4) of Section 86 of the Act, can be allowed to join. Now, Section 86 (1) of the Act enjoins a legal duty upon the Court to dismiss an election petition which does not comply with the provision of Sections 81, 82 or 117. Thus, in this view of the matter, from whatsoever angle this election petition may be viewed, it does not absolve the petitioner from his statutory duty to implead the aforesaid three candidates. His failure to do so, coupled with decision of issues 1 and 2, attracts dismissal of his election petition. Issue 3 is decided accordingly.

Relief. In view of the discussion on the aforesaid issues, election petition is dismissed with costs quantified at Rs. 3,000 (Rupees three thousand only) payable by the petitioner to respondent No. 1 E.M.Ps 4 and 6 of 1994 also stand disposed of in terms of the above. The other respondents

shall bear their own costs. The Registry is directed to communicate the substance of this decision to the Election Commission and Speaker of the Himachal Pradesh Legislative Assembly and it shall also forward in authenticated copy of this order as soon as it is ready, to the Election Commission in accordance with the provisions of Section 103 of the Act.

19th May, 1994.

YC.

D. P. SOOD,

By order,

GHANSHYAM KHOHAR,
*Secretary,
Election Commission of India.*